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No. _____

In The

Supreme Court of the United States

October Term, 1989

ADAMS FRUIT COMPANY, INC., a Florida corporation,

Petitioners,

v.

RAMSFORD BARRETT, DAVID SAPP, EDWARD TYRELL, DARYL HAMILTON, GARFIELD HILLS, JR., ANTHONY GILL, LYNVAL ALDRIDGE, SEMORE HAYLES, AUDLEY KIRLEW and WINSTON WARNER,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Whether the Migrant and Seasonal Agricultural Workers Protection Act preempts the exclusive remedy of state workers compensation benefits for bodily injury.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Adams Fruit Company, Inc. respectfully petitions for a writ of certiorari to review an order of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The decision of the Court of Appeals of the Eleventh Circuit is reported at 867 F.2d 1305 (11th Cir. 1989) and is set out as Appendix A, p. 1a of the petition.

The order of the U. S. District Court of the Middle District of Florida, is set out as Appendix B, p. 16a.

JURISDICTION

The judgment of the Court of Appeals of the Eleventh Circuit was entered on March 15, 1989, and is attached as Appendix C, p. 20a of this petition. No rehearing was sought. Jurisdiction of this court is invoked under 28 U.S.C. §1254.

STATUTES AND REGULATIONS INVOLVED

Sections 1801, 1841, 1854, and 1871 of the Migrant and Seasonal Agricultural Workers Protection Act (AWPA), 29 U.S.C. §1801 *et seq*. are set out as Appendix E, p. 31a of this petition.

U.S. Department of Labor Regulation, found at 29 C.F.R. §500.122(b) is set out as Appendix F, p. 36a of this petition.

Section 440.11 *Florida Statutes*, of the Florida Workers Compensation Statute, is set out as Appendix G, p. 37a of this petition.

Excerpts from the legislative history of AWPA, reprinted at 4 *U.S. Code & Adm.News* (1982), p. 4547 (House Rep. 97-885, no Senate report submitted) is set out as Appendix H, p. 38a of this petition.

STATEMENT OF THE CASE

The respondents, plaintiffs below, a group of farm workers employed by Adams Fruit, the Petitioners, were injured in an accident while being transported in an Adams Fruit van. Adams Fruit compensated these workers for their medical expenses and lost wages through workers compensation. Subsequently, these farm workers brought suit for statutory damages and additional actual damages for alleged record keeping and motor safety violations under the Migrant and Seasonal Agricultural Workers Protection Act [hereinafter AWPA], 29 U.S.C. §1801, *et seq.*, Appendix E, p. 31a. AWPA was created "To assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employees." 29 U.S.C. §1801, Appendix E, p. 31a. The farm workers alleged that they were entitled to damages for pain and suffering and loss of earning capacity for their injuries if these damages were greater

than the nominal statutory damages of $500 per Plaintiff per violation.

Adams Fruit filed a motion for partial summary judgment on the grounds that the exclusive remedy provisions of the workers compensation statute, Section 440.11, *Florida Statutes*, Appendix G, p. 37a, constituted a complete bar to these claims. The United States District Court for the Middle District of Florida granted a partial summary judgment to the Petitioner as to liability for alleged bodily injuries brought under the motor vehicle safety provisions of AWPA. *Barrett v. Adams Fruit Company, Inc.*, No. 86-1301-Civ.-T-17 (M.D. Fla. Oct. 29, 1987), Appendix B, p. 16a. The order denied summary judgment concerning the miscellaneous alleged record keeping violations. These claims were subsequently settled and dismissed.

In reaching its decision, the Middle District of Florida relied on the rationale expressed in *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987), *cert. denied*, ___ U.S. ___, 108 S.Ct. 163 (1987) Appendix D, p. 22a. *Roman* held that Congress was cognizant of state workers compensation laws when enacting AWPA and that AWPA was intended to mesh with state laws, not interfere with or supersede them. *Roman* also relied on this Court's decision in *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382 (1966) that where a workers compensation remedy reasonably and fairly covered a group of workers, it was presumably the exclusive remedy.

These farm workers then appealed the partial summary judgment to the Eleventh Circuit Court of Appeals,

which reversed and remanded. In rejecting *Roman*, the Eleventh Circuit stated:

> We cannot agree with the fourth circuit that section 1871 compels a conclusion of non-preemption . . . We believe that by allowing workers compensation insurance to be used to satisfy the insurance or liability bond requirement of the Act, Congress did not thereby foreclose all possible methods by which state workers compensation law might be preempted.

Barrett v. Adams Fruit Company, Inc., 867 F.2d 1305, 1307 n.1 (11th Cir. 1989), Appendix A, p. 5a. At the same time, the Eleventh Circuit invalidated the Department of Labor regulation promulgated under AWPA which specifically stated:

> (b) Where a State workers compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

29 C.F.R. §500.122(b), Appendix F, p. 36a.

Adams Fruit Company, Inc. now petitions this court for a writ of certiorari to review the opinion below.

LOWER COURT JURISDICTION

Jurisdiction in the District Court was founded on 29 U.S.C. §1854 and 28 U.S.C. §1331 and §1337.

REASONS FOR GRANTING THE WRIT

POINT I

A TRUE, ACKNOWLEDGED CONFLICT NOW EXISTS BETWEEN THE HOLDINGS IN THE FOURTH AND ELEVENTH CIRCUIT COURTS OF APPEALS.

In its opinion below, the Eleventh Circuit held that AWPA preempted the exclusive remedy provisions of workers compensation law. *Barrett v. Adams Fruit Company, Inc.*, 867 F.2d 1305 (11th Cir. 1989). Appendix A, p. 1a. At the same time, the Eleventh Circuit acknowledged a conflict with the Fourth Circuit Court of Appeals's conclusion of no preemption. *Id.* at 1306, 1307 n.1.

In *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987), *cert. denied*, ___ U.S. ___ 108 S.Ct. 163 (1987), Appendix D, p. 22a, a migrant worker claimed damages from injuries which allegedly arose from being sprayed by pesticides while working in the defendant employer's fields. The plaintiff had filed a state workers compensation claim and also sought additional damages under AWPA. The District Court held that the worker's exclusive remedy was provided under the South Carolina workers compensation law.

As in the present case, the determinative issue presented on appeal was preemption. The Fourth Circuit concluded that AWPA was not intended to provide an additional remedy for an on-the-job injury in a situation where state workers compensation was available. In reaching this conclusion, the Fourth Circuit evaluated the language of AWPA itself, circuit and Supreme Court precedent, and the legislative historyof AWPA.

The Fourth Circuit noted AWPA language that "This chapter is intended to supplement state law, and compliance with this chapter shall not excuse any person from compliance with appropriate state law and regulation," 29 U.S.C. §1871, was a clear directive from Congress that AWPA did not preempt state workers compensation laws. *Id.* at 1118. *See* Appendix E, p. 35a. The Fourth Circuit found that Congress intended to preserve the workers compensation laws under §1841 of AWPA which addressed motor vehicle safety. Section 1841(c) provided that no liability insurance policy was required if an employer only transported his workers under circumstances where there was coverage under a state workers compensation law. *Id. See* Appendix E, pp. 32a-33a.

The *Roman* court recognized *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382 (1966) as significantly persuasive authority. In *Demko* a federal prisoner claimed he was injured during an assigned prison task and filed both a claim for compensation benefits under the Federal Employees Compensation Act and an award under the Federal Torts Claims Act. This Court denied the claim, basing its decision on the *Johansen* principle that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Id.* at 385 U.S. 152, 87 S.Ct. at 384 (citing to *Johansen v. United States*, 343 U.S. 427, 72 S.Ct. 849 (1952)). *Demko* reasoned that, to hold otherwise, would give injured prisoners greater protection than all other government employees, "a congressional purpose not easy to infer." *Demko*, 385 U.S. at 384.

The *Roman* court found "nothing in the legislative history, which is found at 4 *U.S. Code & Adm. News* (1982),

p. 4547 (House Rep. No. 97-885, no Senate report submitted) or in the language of the [AWPA] statute which indicated that the South Carolina Workers Compensation Law, which does cover the plaintiffs, should not be the exclusive remedy to protect him from an on-the-job injury." *Id.* at 119. *See* Appendix H, p. 38a.

The *Roman* court also reasoned that to allow AWPA to have the type of supplemental effect claimed by the plaintiff migrant worker would give him a greater protection than other agricultural workers in the state covered by the state workers compensation law. In a footnote, the court admonished the plaintiff for seeking the benefits of the workers compensation statute, but seeking to escape the exclusivity provisions of the same law under which he claimed benefits. *Id.* at 1120 n. 4. Although the *Roman* case did not involve a motor vehicle injury, the court analogized that any on-the-job injury covered by workers compensation was exclusively within the ambit of that compensation. It did so by looking to the motor vehicle safety section of the AWPA, specifically 29 U.S.C. §1841(c), which was drafted to coincide with workers compensation policies when job-related motor vehicle accidents caused bodily injury.

On the other hand, the Eleventh Circuit in this case rejected the opinion of the Fourth Circuit and found that AWPA preempted the exclusive remedy provisions of Florida's workers compensation law. The Eleventh Circuit invalidated this Department of Labor regulation: "[w]here a state workers compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers compensation benefits are the exclusive remedy for loss under this

Act in the case of bodily injury or death." 29 C.F.R. §500.122(b), Appendix F, p. 36a.

The Eleventh Circuit found preemption based upon legislative history. The Eleventh Circuit, however, relied upon the history of the separate and repealed Farm Labor Contractor Registration Act (FLCRA) and not AWPA. In 1978, a bill was proposed which would have amended FLCRA to allow workers compensation benefits as a substitute for vehicle liability insurance. Congress rejected the amendment. Yet, the Eleventh Circuit has now determined that workers compensation exclusivity would frustrate Congressional intent of AWPA. In doing so, the Eleventh Circuit overlooked the controlling legislative history of AWPA, which *did* allow workers compensation to substitute for vehicle liability insurance.

POINT II

THIS CONFLICT ENDANGERS FARMERS AND CREATES INCONSISTENT RIGHTS AND REMEDIES FOR MIGRANT AND SEASONAL AGRICULTURAL WORKERS UNDER A SINGLE FEDERAL LAW.

Because of this conflict in the circuits and the uncertainty which it has engendered, it is now impossible for farmers across the nation to know to what extent they must protect themselves from the additional losses imposed by the Eleventh Circuit decision. If this conflict in the circuits is left unresolved, it will also create inequities between those farmers and those workers in states that require the purchase of workers compensation insurance for migrant and seasonal laborers and those that do not.

The extent of this problem is far-reaching. With certain narrow exceptions, workers compensation covers agricultural workers in 38 different jurisdictions across the United States. 4 *Larson's Workmen's Compensation Law*, App. A 4-1 to A 4-5 (1985 report). In the majority of these jurisdictions, workers compensation coverage is compulsory. Congress has told the farmer that if he has workers compensation coverage which protects his migrant and seasonal workers, "no additional insurance for damage to persons need be obtained." 4 *U.S. Code & Adm. News* (1982), p. 4547, House Rep. 97-885. Appendix H, p. 38a. [hereinafter *"House Report"*]. The Department of Labor has told the farmer that workers compensation is the exclusive remedy of the migrant and seasonal workers in cases of bodily injury or death. 29 C.F.R. 500.122(b), Appendix F, p. 36a. AWPA itself made clear the fact that it was not necessary for a farmer to purchase liability insurance for protection if workers compensation applied. 29 U.S.C. 1841(c), Appendix E, pp. 32a-33a.

The decision of the Eleventh Circuit penalizes the farmers who relied upon the governmental directives and provided workers compensation. Now, the farmers in states where workers compensation applies, as opposed to those states where it does not, are finding themselves exposed to new hardships. In Florida, they may be unprotected for extensive injury claims for non-economic losses which are not contemplated within workers compensation benefits. Since the statute of limitations has conceivably not yet run on many of these claims, the Florida farmer may have unavoidable, unlimited exposure for accidents which he justifiably believed were resolved by payment of workers compensation benefits.

Outside of Florida, with the exception of the Fourth Circuit, farmers cannot know with any certainty if they are at risk and need to purchase some new type of liability coverage (that may not even be in existence) which is specifically designed to cover claims over and above workers compensation benefits. Certainly, even if the Eleventh Circuit opinion was correct, the intent of AWPA was not for farmers to purchase workers compensation coverage and then proceed at their own risk for this additional extensive liability. At the same time, after spending a considerable amount of money to procure workers compensation coverage, the purchase of additional liability coverage confers an economic hardship that cannot be ignored given today's farm situation.

It may be impossible for farmers to find insurance carriers willing to write vehicle liability insurance for farm workers where workers compensation is also provided to those workers. In fact, the scarcity of carriers who would do so in the State of Florida was the prime concern of Representative Ireland, who originally sponsored the bill to incorporate workers compensation insurance into the amendments to FLCRA, AWPA's predecessor, and who stated that "Those [carriers] who do [provide such insurance] charge a rate three to four times higher than the normal one." *Farm Labor Contractor Registration Act: Hearings Before the Subcomm. on Economic Opportunity of the Comm. on Educ. and Labor,* 95th Cong. 2d Sess. 4 (1978), p. 34 [hereinafter *"Hearings"*].

This Court should resolve this inequity without delay. It should not be left to haphazard piece-meal litigation of this issue throughout the nation. This issue will present a recurring problem to both the farmers and

workers until it is corrected. In fact, the U. S. District Court of the District of Oregon has recently adopted the Eleventh Circuit preemption rationale in *Fletes v. John I. Hass, Inc.*, No. 89-85 FR (D. Ore. June 2, 1989). Appendix I, p. 41a. Similar litigation is sure to escalate with the widespread review of the publication of the decision of the Eleventh Circuit.

To allow this conflict to remain unresolved will have a devastating effect on the farmers of America. Because any court-imposed AWPA liability for damages beyond workers compensation is generally not considered an insured loss under most insurance policies, farmers have a tremendous potential exposure for non-insured claims under the Eleventh Circuit ruling. This is particularly true for current or future multiple catastrophic injuries for which a court or jury could award substantial pain and suffering or death benefit amounts.

The petitioner urges this Court to grant its petition for writ of certiorari to end this uncertainty and to establish uniformity across the nation regarding the insurance requirements necessary. Only an early resolution of this conflict will prevent farm owners' unwitting exposure to massive uncovered liability claims, avoid unnecessary duplication of insurance costs, and protect both the farmers and the workers by clarifying their rights and obligations under AWPA.

POINT III

THE DECISION OF THE ELEVENTH CIRCUIT IGNORES THE INTENT OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKERS PROTECTION ACT AS EXPRESSED IN ITS LEGISLATIVE HISTORY AND DEFINED IN THE DEPARTMENT OF LABOR REGULATIONS.

A. The Statute

In its decision below, the Eleventh Circuit ignored the intent of AWPA, focused instead on its repealed precursor FLCRA, and misapplied FLCRA legislative history. Specifically, the court reasoned that because Congress rejected an amendment to FLCRA in 1978, which would have allowed workers compensation insurance to replace vehicular liability insurance, Congress never intended to make workers compensation an exclusive remedy for bodily injury under AWPA. This reasoning misconstrues both the thrust of the Congressional hearings surrounding the original proposed amendment to FLCRA and the intent of AWPA to effect a compromise.

The concern evident in the hearings on the proposed amendments to FLCRA was providing a "reasonable amount of insurance" and "reasonable protection" to agricultural workers involved in vehicular accidents on the job. *Hearings*, pp. 200-201. Congress did not intend to overinsure those workers already reasonably protected by workers compensation in some states. The concerns raised in the hearings did not involve workers compensation exclusivity. Instead, the legislators were concerned with the following: (1) seasonal workers did not come under workers compensation in some of the states where workers compensation applied to agricultural workers; (2) the employer-employee relationship may not have

been established while the agricultural workers were transported to the place of agricultural employment; (3) coverage varied from state to state; and (4) workers compensation may not apply to injuries occuring out of state. *Hearings*, p. 34, 54, 133. The hearings on the amendments to FLCRA proved that Congress knew what it was doing when it later passed AWPA, and Congress did include a special provision incorporating workers compensation into the statute.

In enacting AWPA, and repealing FLCRA, Congress affirmatively chose not to penalize certain types of employers by requiring them to overinsure workers who already had adequate coverage under state workers compensation law. Congress voiced its decision in the published legislative history of AWPA which states specifically "The Act further provides that in those situations where agricultural workers are transported and are covered by state workers compensation no additional insurance for damages to persons need be obtained." *House Report*, Appendix H, p. 39a. Congress intended that any employers whose workers were excluded from workers compensation coverage, for whatever reason, needed to provide protection for their workers through vehicle liability insurance.

The Eleventh Circuit's opinion consistently confuses the legislative intent of AWPA with that of its repealed predecessor, FLCRA. However, the intent of the two statutes were far from identical. This was pointed out repeatedly in both the House and Senate by the legislators who sponsored the bills repealing FLCRA and substituting AWPA. According to Senator Hatch, who introduced the bill in the Senate, "Congress enacted the current law

FLCRA in 1963 to curb the exploitation of migrant agricultural workers *and their employers* by irresponsible farm labor contractors. Known commonly as crew leaders, these contractors typically traveled the country following the planting and harvesting season." 128 Cong Rec. 24,090 (1982). (e.s.) FLCRA was established to curb the abuses by those intermediaries between migrant workers and agricultural employers. *Id.*

On the other hand, AWPA was introduced as "a compromise worked out by farm worker representatives and employer representatives." 128 Cong. Rec. 24,204 (1982) (statement of Senator Quayle). In the House, the bill was introduced as legislation which "provides a viable solution to the problems of the past, and effectively protects the rights and interests of agricultural employers and farm workers." 128 Cong. Rec. 26,010 (1982) (statement of Congressman Panetta). Significantly, the House Report on AWPA prominently refers to the Act as a "consensus bill," stating that the Act was drafted only after extensive negotiations between representatives of all groups affected by this Act and that it attempted to balance fairness to the migrant workers with fairness to their employers. *House Report*, Appendix H, pp. 38a-39a. The Act itself sets out its purpose at 29 U.S.C. §1801, Appendix E, p. 31a, namely, "to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, *and* agricultural employers." (e.s.)

This Court has deemed, however, that a state law will not be preempted by a federal law unless "the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained." *Florida Lime and Avocado Growers, Inc., v. Paul*, 373 U.S. 132, 142,

83 S.Ct. 1210, 1217 (1963). *See also DeCanas v. Bica*, 424 U.S. 351, 96 S.Ct. 933 (1976) (recognizing state police power to govern employment relationships which should not be preempted without clear intent of Congress and citing to FLCRA's [now AWPA's] language that it was "intended to supplement state action"). *See* 29 U.S.C. §1871, Appendix E, p. 35a.

In sum, the Eleventh Circuit's opinion ignores the goals and purposes of AWPA. Instead, it focuses on the legislative history of FLCRA which was enacted for different reasons, was repleate with problems for both farmers and workers, and was repealed. AWPA was drafted to correct FLCRA's deficiencies. The purposes of AWPA were compromise and consensus. At the same time, workers compensation was incorporated into AWPA as it had not been in FLCRA. Congress was fully aware of the exclusivity of workers compensation when it passed AWPA.

B. The Department of Labor Regulation

To reach its decision, the Eleventh Circuit rejected, as invalid, a Department of Labor regulation which provides for workers compensation exclusivity in cases of bodily injury or death when a worker is provided with workers compensation coverage under the Act. 29 C.F.R. §500.122(b), Appendix F, p. 36a. The court concluded that the Department of Labor regulation did not conform with Congressional intent. This Eleventh Circuit interpretation disrupts the harmony between the application of AWPA and the traditional benefits of workers compensation. It is now conceivable that every on-the-job injury by a

migrant or seasonal worker will be subject to litigation in tandem with the receipt of workers compensation benefits. This is a rather curious result, as no other group of workers has this privilege.

It is difficult to understand the Eleventh Circuit's conclusion in light of the legislative history of AWPA. The House Report setting out the legislative history of the Act specifically states that the United States Department of Labor representatives were participants in the negotiations which resulted in this consensus bill. *House Report*, Appendix H, pp. 38a-39a. Congress also recognized the Department of Labor as a key player in drafting AWPA: "For the past 18 months the Department of Labor has engaged in extensive negotiations with the various interest groups . . . " 128 Cong. Rec. 24,090 (1982) (statement of Senator Hatch). In the House, Congressman Erlanborn recognized the Department of Labor, particularly Assistant Deputy Undersecretary Craig Berrington, the subsequent drafter of the regulation, as "the leader and negotiator in these extensive give-and-take meetings." 128 Cong. Rec. 26,008 (1982). Mr. Erlanborn stated that "All interested parties, agricultural employers, representatives of migrant workers, and the AFL-CIO reached a consensus in support of this bill . . . With this bill, the parties most affected agree that their problems have been solved." *Id.*

The Eleventh Circuit relied on legislative history of repealed FLCRA to invalidate this AWPA regulation. The oft-repeated intent of Congress when AWPA was enacted was to effect a compromise between workers and farmers regarding their employment conditions. The legislative

history of AWPA provides no basis for the Eleventh Circuit's disapproval of the regulation recognizing workers compensation exclusivity. This Court has held that "If a statute is silent or ambiguous with respect to the question at issue, our longstanding practice is to defer to the 'executive department's contruction of a statutory scheme it is intrusted to administer,' unless the legislative history of the enactment shows with sufficient clarity that the agency construction is contrary to the will of Congress." *Japan Whaling Association v. American Cetacean Society*, ___ U.S.___, 106 S.Ct. 2860, 2868 (1986) (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 104 S.Ct. 2778 (1984).) (additional citations omitted). Simply stated, the Eleventh Circuit chose to ignore this controlling and sensible directive.

If the regulation had not comported with the consensus opinion of the parties affected by AWPA, there was certainly an opportunity to voice an objection before the regulations were finalized. In fact, on April 12, 1983, interim regulations of AWPA and a request for comments were published in the Federal Register. 48 Fed. Reg. 15800, No. 71 (April 12, 1983). The publication described AWPA as "the culmination of 18 months of cooperative efforts by the Department of Labor, key members of Congressional committees and their staffs, major agricultural employer organizations, the AFL-CIO and the Migrant Legal Action Program to bring about needed reform in this area." *Id.* Interested persons were given an opportunity to submit comments to the Wage and Hour Division within 30 days after publication of the interim regulations in the Federal Register. *Id.*

Objections to the wording of the regulations and suggestions for their clarification were set out in the Federal Register published on August 12, 1983. 48 Fed. Reg. 36736, No. 157 (August 12, 1983). The only reference to Section 500.122 in it entirety was a paragraph stating that "In response to suggestions from various commentators, many wording changes were made in these sections to make clear the coverage and level of insurance required by the Act." *Id.* Significantly, no changes were made to that portion, later codified as 29 C.F.R. §500.122(b), the regulation setting out workers compensation exclusivity, nor were any objections noted. If the representatives of the farm workers did not believe that the regulation reflected the intent of AWPA, such an objection could certainly have been submitted at that time. Thus, the consensus opinion upon which AWPA was based contemplated state workers compensation exclusivity.

The Eleventh Circuit also erred in concluding that workers compensation exclusivity would deny the workers their private right of action and negate any deterrent effect of the motor vehicle safety provisions. There is nothing to prevent a migrant worker from suing his employer for safety violations in the motor vehicles on the work place. It is only when there has been a case of bodily injury, that workers compensation exclusivity prevents a duplicate recovery. Certainly, if migrant workers believe that a farmer is not providing them with safe vehicles for transport, they can sue to enforce these safety requirements, but they cannot recover twice for the same injury.

Workers compensation premiums are based on the experience rate. If an employer has an unsafe record, his rates will naturally go up. There are numerous provisions built into both workers compensation legislation and AWPA which serve as additional deterrents. Under §440.56 *Florida Statutes*, the State requires insurance companies to conduct safety inspections of vehicles used in the work place. Penalties are assessed against companies who fail to comply with the standard set out by the Division of Workers Compenstion. Under AWPA, an employer can receive criminal sanctions under 29 U.S.C. §1851 for violation of the safety standards. The Secretary of Labor can seek injunctions and civil money penalties up to $1,000 for each violation under 29 U.S.C. §§1852 and 1853. There is certainly sufficient incentive for a farmer to provide his workers with safe vehicles despite workers compensation's exclusivity.

Thus, the conclusion of the Eleventh Circuit both (1) ignores the intent of Congress to replace FLCRA with a true consensus bill designed to balance the rights and protect the interests of all parties affected by the Act and (2) invalidates a regulation specifically designed and approved for that purpose.

CONCLUSION

For these reasons, this petition for a writ of certiorari should be granted.

Respectfully Submitted,

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APPENDIX A

**Ramsford BARRETT, et al.,
Plaintiffs-Appellants,**

v.

**ADAMS FRUIT COMPANY, INC.,
Defendant-Appellee.**

No. 88-3121.

United States Court of Appeals,
Eleventh Circuit.

March 15, 1989.

Injured farm workers brought action under the Migrant and Seasonal Agricultural Worker Protection Act for injuries they received while being transported in a van owned by their employer. The United States District Court for the Middle District of Florida, No. 86-1301-CIV-T-17(B), Elizabeth A. Kovachevich, J., found the suit was barred by exclusive remedy provision of Florida's workers' compensation laws. Workers appealed. The Court of Appeals, Vance, Circuit Judge, held that: (1) Migrant and Seasonal Agricultural Worker Protection Act preempted exclusive remedy provisions of workers' compensation law, and (2) receipt of workers' compensation benefits did not bar private suit under the Act for actual or statutory damages.

Reversed and remanded.

Nora Leto, Bartow, Fla., Mivoshi D. Smith, Lipman & Weisberg, Miami, Fla., Florida Rural Legal Services, Inc., West Palm Beach, Fla., for plaintiffs-appellants.

Bonita L. Kneeland, Fowler, White, Gillen, Boggs, Villareal & Banker, Tampa, Fla., for defendant-appellee.

Appeal from the United States District Court for the Middle District of Florida.

Before VANCE and KRAVITCH, Circuit Judges, and HENDERSON, Senior Circuit Judge.

VANCE, Circuit Judge:

This case requires us to determine whether the Migrant and Seasonal Agricultural Worker Protection Act, Pub.L. No. 97-470, 96 Stat. 2584 (1983) (codified at 29 U.S.C. §§ 1801-1872), ("the Act") preempts the exclusive remedy provision of Florida's workers' compensation laws, Fla.Stat.Ann. § 440.11 (West 1981). For the reasons set forth below we conclude that the private cause of action provision of the Act, 29 U.S.C. § 1854, preempts the Florida statute. Therefore, the receipt of workers' compensation benefits does not bar a private suit under the Act for actual or statutory damages.

I.

On May 8, 1985 plaintiffs, a group of farm workers, were injured in an accident while being transported in a van owned by their employer, Adams Fruit Company, Inc. ("Adams"). Plaintiffs received workers' compensation benefits pursuant to Florida law. They sued Adams under 29 U.S.C. § 1854. In their complaint plaintiffs alleged that the accident occurred and that their injuries were aggravated because Adams violated the Act and its implementing regulations by transporting plaintiffs in an unsafe van loaded beyond its seating capacity, by failing to provide a seat belt for each passenger and by failing to secure water storage containers transported in the van.

Pursuant to section 1854 plaintiffs sought declaratory and injunctive relief and damages "equal to the amount of actual damages they suffered as a result of defendant's violations of the [Act] or statutory damages of $500 per plaintiff per violation of the Act and its implementing regulations, whichever is greater."

Plaintiffs here appeal from the grant of summary judgment in favor of Adams as to its liability for actual or statutory damages due to violations of the Act's transportation safety requirements. The district court concluded that plaintiffs' claims for actual or statutory damages under the Act were barred by Fla.Stat. § 440.11, which provides in part that "[t]he liability of an employer . . . shall be exclusive and in place of all other liability of such employer . . . to the employee . . . and anyone otherwise entitled to recover damages from such employer at law or in admiralty. . . ." The district court relied on a Department of Labor regulation which provides that "[w]here a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death." 29 C.F.R. § 500.122(b). The district court was also persuaded by the recent decision of the fourth circuit that the Act was not intended to preempt state workers' compensation laws. *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir.1987), *cert. denied*, ___ U.S. ___, 108 S.Ct. 163, 98 L.Ed.2d 117 (1987).

The parties settled their claims for statutory penalties for other violations of the Act. This appeal followed.

II.

There are several ways in which a state statute may be preempted by a federal law and thereby rendered invalid under the Supremacy Clause.

> First, when acting within constitutional limits, Congress is empowered to preempt state law by so stating in express terms. . . . Second, congressional intent to preempt state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation. . . .
>
> As a third alternative, in those areas where Congress has not completely displaced state regulation, federal law may nonetheless preempt state law to the extent it actually conflicts with the federal law. Such a conflict occurs either because "compliance with both federal and state regulation is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143, 83 S.Ct. 1210, 1217, 10 L.Ed.2d 248 (1963), or because the state law stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941). . . .

California Fed. Sav. and Loan Ass'n v. Guerra, 479 U.S. 272, 280-81, 107 S.Ct. 683, 689, 93 L.Ed.2d 613 (1987) (citations omitted). Neither the first nor second basis of preemption is present here. In passing the Act, Congress expressly recognized and left room for state regulation. Section 1871 provides that "[t]his chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation." 29 U.S.C. § 1871.

To determine whether the Florida statute is preempted under the third basis we must ascertain the purposes and objectives of the Act.[1] This involves questions of statutory construction. Thus, the deference with which we would ordinarily treat administrative regulations is not appropriate. *See Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421, 447-48, 107 S.Ct. 1207, 1221-22, 94 L.Ed.2d 434 (1987) (" 'The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent. . . .' ") (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 843 n. 9, 104 S.Ct. 2778, 2782 n. 9, 81 L.Ed.2d 694 (1984)).

A.

We begin by examining the background of the Act. The legislative history is complex, reflecting repeated Congressional attempts to strengthen enforcement and

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[1] We cannot agree with the fourth circuit that section 1871 compels a conclusion of nonpreemption. *See Roman v. Sunny Slope Farms, Inc.*, 817 F.2d at 1118-19 (4th Cir.1987). Reading this section with section 1841(c), which permits workers' compensation coverage to be used to satisfy insurance requirements under the Act, the fourth circuit concluded that "§ 1841 shows that Congress was cognizant of state workers' compensation laws, for [the Act] was in that instance written in view of and to mesh with the state laws, and not to interfere [sic] or supersede them." *Id.* at 1119. We believe that by allowing workers' compensation insurance to be used to satisfy the insurance or liability bond requirement of the Act, Congress did not thereby foreclose all possible methods by which state workers' compensation laws might be preempted. We therefore must consider whether the third basis of preemption is present.

broaden protections to migrant and seasonal farmworkers. The Act's predecessor, the Farm Labor Contractor Registration Act, Pub.L. No. 88-582, 78 Stat. 920 (1963) ("FLCRA") (repealed in 1983 by the Act), was enacted in 1963 in response to problems of farmworker exploitation and abuse. *See* S.Rep. No. 202, 88th Cong., 2d Sess. *reprinted in 1964 U.S.Code Cong. & Admin.News*, 3690, 3692. This act established a system of federal registration for interstate farm labor contractors and required them to keep detailed payroll records for each worker, to disclose truthfully to farmworkers information about the area of employment, crops, wage rates, housing and transportation to be provided, and to obtain insurance covering the transportation of these workers. The Secretary of Labor was responsible for enforcement. *See* Farm Labor Contractor Registration Act, §§ 5, 6, 7, *reprinted in 1964 U.S.Code Cong. & Admin.News*, 1048, 1050-52.

By 1974, testimony before Congress made clear that the FLCRA needed strengthening.[2] As a result, Congress amended the FLCRA to broaden coverage and strengthen enforcement. In order for farm labor contractors to receive a certificate of registration from the Secretary of

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[2] The Senate report accompanying the 1974 amendments to the FLCRA noted that "[i]t has become clear that the provisions of the Act cannot be effectively enforced. Non-compliance by those whose activities the Act were intended to regulate has become the rule rather than the exception. . . . It is quite evident that the Act in its present form provides no real deterrent to violations." *See* S.Rep. No. 93-1295, 93rd Congress, 2d Sess., *reprinted in 1974 U.S.Code Cong. & Admin.News*, 6441, 6443. The lack of a private remedy for aggrieved workers was cited as one of the reasons for the ineffective enforcement of the FLCRA. *Id.*

Labor, they were required to show proof of vehicle insurance and to demonstrate that their vehicles and property complied with federal and state health and safety standards. The 1974 amendments created a federal cause of action for damages by persons aggrieved by violations of the FLCRA or its regulations. The amendments raised the maximum criminal penalties and empowered the Secretary of Labor to seek injunctive relief and impose civil penalties. *See* Farm Labor Contractor Registration Act Amendments of 1974, Pub.L. No. 93-518, *reprinted in 1974 U.S. Code Cong. & Admin.News* 1899, 1903-1905. The amended act was silent as to the extent to which state workers' compensation insurance could be used to satisfy the minimum insurance requirements.

In 1978[3] congressional hearings were held to examine a number of proposed amendments to the FLCRA and to discuss the manner in which the Department of Labor was administering the act. One proposed bill, H.R. 10631, would have amended section 5(a)(2) of the FLCRA to provide:

> If such applicant has filed proof satisfactory to the Secretary [of Labor] of the existence of a policy of workmen's compensation insurance which insures the payment of workmen's compensation benefits under State law for personal injury or death to migrant workers by accident arising out of and in the course of their employment in connection with his business, activities, or operations as a farm labor contractor, the policy of vehicle liability insurance

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[3] The FLCRA was slightly amended twice in 1976. These amendments are not relevant here. *See* Pub.L. No. 94-259 § 2, 90 Stat. 314 (1976); Pub.L. 94-561 § 6, 90 Stat. 2644 (1976).

provided by him shall conform to the exclusive remedy provisions of the State workmen's compensation law.

H.R. 10631, 95th Congress, 2d Sess., *reprinted in Farm Labor Contractor Registration Act: Hearings on H.R. 8232, H.R. 8233, H.R. 8234, H.R. 8249, H.R. 8894, H.R. 10053, H.R. 10631, H.R. 10810, H.R. 10922 Before the Subcomm. on Economic Opportunity of the Comm. on Educ. and Labor,* 95th Cong., 2d Sess. 4 (1978) [hereinafter *"Hearings"*]. Representative Ireland, the sponsor of this bill, explained that this provision was to prevent courts from allowing "double dipping" by agricultural workers. *See Hearings* at 34. Representatives from the Department of Labor opposed this amendment,[4] as did farmworker representatives.[5] Congress rejected this amendment.[6]

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[4] We have always taken the position that the employer-employee relationship is not a factor in the application of the Farm Labor Contractor Registration Act. . . . The exclusive remedy provisions of the workers' compensation coverage rely on the employer-employee relationship and are more restrictive than the protection provided in the act. We therefore are of the view that workers' compensation protection required under State law is not a substitute for the vehicle liability insurance protection under the act. *Hearings* at 56-57 (statement of Donald Elisburg, Assistant Secretary of Labor).

[5] *See, e.g., id.* at 140 ("The proposed amendment exposes workers once again to all manner of unsafe transportation and should be rejected.") (statement of Michael R. Masinter, Director of Litigation, Florida Rural Legal Services, Inc.).

[6] The 1978 amendments to the FLCRA relate only to the scope of coverage of this act. *See* Perishable Agricultural Commodities Act, Pub.L. No. 95-562 § 4, 92 Stat. 2381, 2382 *reprinted in 1978 U.S.Code Cong.Admin.News.*

Dissatisfaction with the FLCRA continued. In 1982 Congress repealed this act and passed the Migrant and Seasonal Agricultural Worker Protection Act. The House Report accompanying this bill noted that under the FLCRA employers were treated in a "haphazard, burdensome, and often conflicting manner" and concluded that the FLCRA had "failed to reverse the historical pattern of abuse and exploitation of migrant and seasonal farmworkers and that a completely new approach must be advanced." H.Rep. No. 97-885, 97th Cong., 2d Sess. 1, 2-3, *reprinted in 1982 U.S.Code Cong. & Admin.News* 4547, 4548-49. The new act regulated agricultural employers and associations directly.[7] Congressional action was motivated in part by evidence of continuing abuses in the unsafe transportation of workers.[8] The Act requires

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[7] Representative Ford, a co-sponsor of the Act in the House, emphasized the significance of this change. "For the first time, agricultural employees will, under Federal law, have a right to statutory damages from their employer if he furnishes unsafe housing or transportation. . . . The [Act] corrects the key weakness of the FLCRA, which held only the farm labor contractor responsible for such abuses and shielded the employer unless he fell within the narrow definition of 'farm labor contractor' under that act." 128 Cong.Rec.H. 10456 (daily ed. Dec. 20, 1982).

[8] The House report cited as an example of migrant worker abuse an instance in which forty-seven farmworkers were seriously injured when the flat-bed grain truck in which they were being transported overturned. H.Rep. No. 97-885, *reprinted in 1982 U.S.Code Cong. & Admin.News,* 4547, 4549. Testimony during the 1978 hearings suggested that workers' compensation benefits were available to workers injured in this accident but criticized benefit levels as inadequate. *Hearings* at 132 (testimony of Burton Fretz).

migrant and seasonal labor employers and contractors to comply with two separate protections relating to transportation: to ensure that vehicles used to transport workers are operated by licensed drivers and comply with safety standards promulgated by the Secretary of Labor and to provide insurance coverage for the workers while they are being transported. *See* 29 U.S.C. § 1841(a), (b). Subsection (c) of this section provides that:

> If an agricultural employer, agricultural association, or farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply:
>
> (1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.
>
> (2) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

Id. § 1841(c). Research revealed no debate surrounding this language.

Central to the Act's enforcement is the provision for a private right of action for violations of the Act. If a court finds that the defendant has intentionally violated the act or regulations, "it may award damages up to and including an amount equal to the amount of actual damages, or

statutory damages of up to $500 per plaintiff per violation. . . ." 29 U.S.C. § 1854. A cosponsor of the Act in the House predicted that this provision would be "the most important deterrent against the continued abuse of migrant and seasonal farmworkers. As budget cuts undermine the Federal Government's ability to enforce the law, farmworkers will depend increasingly on the private bar and legal service organizations to insure that violations are punished and that they are made whole for their losses and sufferings." 128 Cong.Rec.H. 10456 (daily ed. Dec. 20, 1982) (statement of Rep. Ford).[9]

B.

Both the goal of preventing unsafe transportation practices and the role of private suits in enforcing worker

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[9] Courts have widely recognized the deterrent role of damage awards in suits for violations of the Act's predecessor, the FLCRA. For example in *Montelongo v. Meese*, 803 F.2d 1341, 1350 (5th Cir.1986), *cert. denied sub nom. Martin v. Montelongo*, 481 U.S. 1048, 107 S.Ct. 2179, 95 L.Ed. 2d 835 (1987), the fifth circuit rejected an argument that a liquidated damages award for violations of the FLCRA was too high because it exceeded the amount plaintiffs could have earned if their agreement had been honored. The court noted that the civil remedy was designed to promote enforcement of the FLCRA and deter abuses. *See also Rivera v. Adams Packing Ass'n, Inc.*, 707 F.2d 1278, 1282 (11th Cir.1983) ("the creation of a private cause of action . . . indicates that Congress intended to provide additional means of enforcing [the FLCRA]."); *Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332 (5th Cir.1985) (civil remedy provision of FLCRA "is not restricted to compensation of individual plaintiffs. It is designed also to promote enforcement of the Act and thereby deter and correct the exploitive practices that have historically plagued the migrant farm labor market.").

protections convince us that applying Fla.Stat. § 440.11 to bar private suits for violations of the Act when transportation is covered by workers' compensation insurance would frustrate congressional intent. Many of the transportation safety protections set forth in the Act and regulations would become effectively unenforceable.[10] Once an employer obtained workers' compensation coverage, he or she would have little incentive to comply with the transportation safety requirements set out in the act and its regulations. *See, e.g., Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332 (5th Cir.1985) ("Plainly, it ought not to be cheaper to violate [the FLCRA] and be sued than to comply with the statutory requirements."). We therefore conclude that the exclusive remedy provision in Fla.Stat. § 440.11 is preempted because it stands as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941). *See Michigan Canners & Freezers Ass'n, Inc. v. Agricultural Marketing & Bargaining Bd.*, 467 U.S. 461, 478, 104 S.Ct. 2518, 2527, 81 L.Ed.2d 399 (1984); *Fidelity Federal Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 156, 102 S.Ct. 3014, 3024, 73 L.Ed.2d 664 (1982). *Cf. Rosa v. Cantrell*, 705 F.2d 1208, 1221 (10th Cir.1982), *cert. denied*, 464 U.S. 821, 104 S.Ct. 85, 78 L.Ed.2d 94 (1983) (42 U.S.C. § 1983 preempts exclusive remedy provision of Wyoming's workers' compensation law).

We cannot agree with Adams that section 1841(c) demonstrates that Congress intended for workers' compensation benefits, where available, to be the exclusive

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[10] *See supra* note 2.

remedy for injuries resulting from violations of the transportation safety requirements of the Act. This subsection relates to minimum insurance coverage, only part of the protections covering transported workers in the Act. Congress was well aware of the possibility of "double dipping." *See, e.g., Hearings* at 134. We believe that if Congress had intended to restrict significantly the availability of such a key ingredient as the private right of action if would have done so directly.

Appellee argues that our conclusion would violate the rule applied in *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382, 17 L.Ed.2d 258 (1966) that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Id.* at 152, 87 S.Ct. at 384 (citing *Johansen v. United States*, 343 U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051 (1952)). *Demko* held that a prisoner who had been injured in the performance of his assigned prison tasks and received compensation under 18 U.S.C. § 4126 could not also sue under the Federal Tort Claims Act. "[T]o hold that the 1946 Federal Tort Claims Act was designed to have such a supplemental effect would be to hold that injured prisoners are given greater protection than all other government employees . . . , a congressional purpose not easy to infer." *Demko*, 385 U.S. at 152, 87 S.Ct. at 384. *Demko* involved claims under two federal statutes. In contrast, this case involves claims under a federal and state statute. Moreover, the legislative history and background of the Act provide strong support for the inference that Congress intended to provide heightened protection for migrant and seasonal agricultural workers. Thus, allowing these workers to proceed under the Act

even though they have received workers' compensation benefits does not violate the *Johansen* rule.

Appellee finally argues that it would be contrary to congressional intent and unfair to allow double recovery under workers' compensation laws and a suit for actual or statutory damages under the Act. We note that workers' compensation benefits do not compensate workers for their full actual damages. *See, e.g.*, Fla.Stat. §§ 440.15-.16 (compensation capped at 66⅔% of average wage). The legislative history of the Act, however, indicates that Congress intended for migrant and seasonal farmworkers to recover fully for injuries caused by violations of the Act.[11] Double recovery can be prevented by considering the factors discussed in *Beliz*, 765 F.2d at 1333. There the court noted that "[i]n fixing damages the court may consider. . . .the plaintiffs' recovery on closely related claims joined in the same suit that will in part compensate the damages caused by violations of the Act." A claim for workers' compensation benefits would,

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[11] In discussing the method by which technical violations are counted for the purpose of computing statutory damages, Senator Hatch, who introduced the Senate version of the Act, emphasized that "I want to make absolutely clear, however, that as I have stated earlier, full actual damages would be awarded in every case." 128 Cong.Rec.S. 15565 (daily ed. Dec. 19, 1982) (statement of Sen. Hatch). *See also Beliz*, 765 F.2d at 1332 & n. 68 ("Nor should a worker who sues for violations find recovery inadequate to cover his personal costs in filing suit, testifying, and paying attendant attorney's fees, recovery of which is not allowed by the [FLCRA]") (citing Senate report which notes that farmworkers must overcome a background of fear and intimidation in order to attempt to assert statutory rights).

of course, not be joined in a suit under the Act. Evidence of the amount of workers' compensation benefits received, however, can be considered in calculating the amount of actual damages to be awarded pursuant to section 1854.

We therefore conclude that section 1854 of the Act preempts Florida Stat. § 440.11. The receipt of workers' compensation benefits thus does not bar a private suit for actual or statutory damages based on violations of the Act. The amount of workers' compensation benefits, however, may be considered in awarding actual damages.

Accordingly this case is REVERSED and REMANDED for further proceedings consistent with this opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAMSFORD BARRETT, et al.,
Plaintiffs,

vs. CASE NO. 86-1301-CIV-T-17

ADAMS FRUIT CO., INC.,
Defendant.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

This cause is before the Court on defendant's motion for summary judgment filed on June 30, 1987, and plaintiffs' response thereto.

Defendant moves for summary judgment on the grounds that the exclusive remedy provisions of the §440.11, *Fla. Stat.*, constitute a complete bar to plaintiffs' claims for damages arising out of the accident which occurred on May 8, 1985. Plaintiffs' position is that the accident occurred because defendant violated the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1801 *et seq.* (hereinafter M.S.A.W.P.A.) and its implementing regulations by transporting Plaintiffs in a vehicle that did not comply with the applicable safety provisions of the M.S.A.W.P.A. Plaintiffs further claim that defendant has violated other provisions of the M.S.A.W.P.A in addition to the motor vehicle safety violations, and seek declaratory and injunctive relief as well as damages.

This circuit clearly holds that summary judgment should only be entered when the moving party has sustained its burden of showing the absence of a genuine

issue as to any material fact when all the evidence is viewed in the light most favorable to the nonmoving party. *Sweat v. The Miller Brewing Co.*, 708 F.2d 655 (11th Cir. 1983). All doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. *Hayden v. First National Bank of Mt. Pleasant*, 595 F.2d 994, 996-7, (5th Cir. 1979), quoting *Gross v. Southern Railroad Co.*, 414 F.2d 292 (5th Cir. 1969). Factual disputes preclude summary judgment.

The Supreme Court of the United States held, in *Celotex Corp. v. Catrett*, 477 U.S. ___, 91 L.Ed. 2d 265, 106 S.Ct. ___, (1986),

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Id. at 273.

The Court also said, "Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing there is a genuine issue for trial.' " *Celotex Corp.*, at p. 274. The Court is satisfied that no genuine issue remains for resolution at trial as to whether M.S.A.W.P.A allows additional recovery over and above Workers' Compensation benefits.

29 U.S.C. §1841 – MOTOR VEHICLE SAFETY

The applicable enforcement provision of the M.S.A.W.P.A., §1854(c)(1) provides that the court may award actual damages or statutory damages if the court

finds that the respondent has intentionally violated any provision or regulation of the statute. The motor vehicle safety provisions, §1841, expressly require that farm labor contractors who use vehicles to transport their workers must ensure that the vehicles conform to safety standards, must ensure that the drivers have a valid and appropriate license, and must maintain an insurance policy for personal or property damage arising from ownership or operation of any such vehicle. §1841(c)(1) provides that no insurance policy shall be required if such workers are transported only under circumstances for which there is coverage under State law. This Court agrees with the rationale expressed in *Roman v. Sunny Slope Farms, Inc.*, No. 85-2090, (4th Cir. 1987), in which the Court said "In addition to demonstrating that Congress did not intend to preempt state law, 1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with state laws, and not to interfere or supersede them." The *Roman* Court relied on the *Johansen* rule that where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group. *United States v. Demko*, 385 U.S. 149, 152 (1966).

Plaintiffs argue that if they are denied both actual and statutory damages under M.S.A.W.P.A. no penalty whatsoever will have been assessed against the defendant for its violations of the Act. The Act requires that if workers are transported in an unsafe vehicle, the farm labor contractor pays for damages under a required insurance policy or under a state compensation statute. The plaintiffs here have received their actual damages in

the form of workers' compensation benefits. The affidavit of a representative of Wausau Insurance Company establishes that workers' compensation benefits have been provided to the injured workers in this case. This Court finds that liability for Workers' Compensation benefits is an exclusive remedy and that no additional remedy is available under the M.S.A.W.P.A. The Court grants summary judgment to defendant on this issue.

In their complaint, plaintiffs allege numerous additional violations of the M.S.A.W.P.A. These include violating the terms of a working agreement, recruiting the workers without providing required disclosures, failing to post a listing of the rights and protections afforded under the M.S.A.W.P.A. and failing to provide the workers with itemized written statements for each pay period. These violations remain to be resolved. Accordingly, it is

ORDERED that defendant's motion for partial summary judgment as to liability for actual or statutory damages under the motor vehicle safety provisions of the M.S.A.W.P.A. is **granted.**

DONE AND ORDERED in Chambers in Tampa, Florida on October 29, 1987.

/s/ Elizabeth A. Kovachevich
ELIZABETH A. KOVACHEVICH
United States District Court

Copies to:
All parties and counsel of record

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 88-3121

D.C. Docket No. 86-1301

RAMSFORD BARRETT, et al.,

Plaintiffs-Appellants,

versus

ADAMS FRUIT COMPANY, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

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Before VANCE and KRAVITCH, Circuit Judges, and HENDERSON, Senior Circuit Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby REVERSED; and that this cause be and the same is hereby REMANDED to said District Court for further proceedings in accordance with the opinion of this Court;

IT IS FURTHER ORDERED that defendant-appellee pay to plaintiffs-appellants, the costs on appeal to be taxed by the Clerk of this Court.

Entered: March 15, 1989
For the Court: Miguel J. Cortez, Clerk

By: Karleen McNobb
Deputy Clerk

ISSUED AS MANDATE:

APPENDIX D

Domingo ROMAN, Appellant,

v.

SUNNY SLOPE FARMS, INC., Appellee.

No. 85-2090.

United States Court of Appeals, Fourth Circuit.

Argued June 3, 1986.

Decided May 7, 1987.

Migrant farm worker who was injured on job brought action under the Migrant and Seasonal Agricultural Worker Protection Act, and state common-law claims for battery and fraud. The United States District Court for the District of South Carolina, William W. Wilkins, Jr., J., held that state workers' compensation insurance program provided exclusive remedy to worker, precluding all other claims arising from this incident, and dismissed action, and worker appealed. The Court of Appeals, Widener, Circuit Judge, held that: (1) migrant agricultural worker, who was covered by state workers' compensation law which provided that it was exclusive remedy, bound worker and thus, he could not recover under federal act, and (2) issue of whether case was dismissed on motion for summary judgment or for failure to state cause of action was not determinative, where both trial court and appellate court gave worker benefit of every fact he claimed.

Affirmed.

Murnaghan, J., filed concurring opinion.

Marvin H. Feingold, Neighborhood Legal Assistance Program, Inc., Charleston, S.C., for appellant.

Stanley T. Case (Edward R. Cole, Butler, Means, Evins & Browne, Spartanburg, S.C., on brief) for appellee.

Before WIDENER, K.K. HALL and MURNAGHAN, Circuit Judges.

WIDENER, Circuit Judge:

The appellant-plaintiff, a migrant farmworker, was injured on the job and brought this action with claims under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. § 1801 *et seq.*, and state common-law for battery and fraud. The plaintiff claims his injuries arose from being sprayed by pesticides while working in the defendant's fields. The district court dismissed the complaint because it found that South Carolina's Workers' Compensation Law, S.C.Code Ann. § 42-1-10 *et seq.* provided the exclusive remedy for all of plaintiff's claims. We affirm.

The plaintiff, Domingo Roman, alleges that while working as a migrant farm worker in the defendant's peach orchards during July and August of 1983, he was repeatedly sprayed with a chemical pesticide dangerous to humans. He also alleges that although his employer knew he was being sprayed, or should have known he might have been sprayed, the employer failed to provide protective clothing as required in their written employment agreement. Roman alleges that he was hospitalized for four days during his employment for an illness caused by these sprayings.

The plaintiff claims that when he complained about the sprayings, his employment was terminated and he was promptly sent back to the employer's recruitment offices in New Jersey. He also alleges that his employer fraudulently concealed the facts surrounding the pesticide sprayings preventing the plaintiff from effectively pursuing his remedies at law.

The defendant, Sunny Slope Farms, Inc., denies that Roman was sprayed with any deleterious substance or exposed to pesticide in any manner which would require protective clothing. Furthermore, the defendant asserts that since it has elected coverage under the South Carolina workers' compensation Law, that Law provides the exclusive remedy against an employer to an employee so injured on the job. *See* S.C.Code Ann. §§ 42-1-540, 42-1-360(5).

The plaintiff's AWPA claim alleges that Roman and the defendant entered a written contract of employment wherein the employer promised to furnish him special clothing required to perform his work, and that plaintiff would at all relevant times be covered by a policy of Workmen's Compensation Insurance. Roman alleges that his employer's failure to furnish him protective clothing constitutes a violation of AWPA, actionable under 29 U.S.C. § 1854, since such failure violates § 1822(c) which requires an employer to conform to any working agreements made with its workers.

The district court held that the state workers' compensation insurance program provided an exclusive remedy to the plaintiff, precluding all other claims arising

from this incident. Furthermore, it dismissed the plaintiff's battery and fraud claims as encompassed within § 42-9-70 of the South Carolina Code, which adds a 10 per cent penalty for an employer's wilful failure to comply with any statutory requirement. S.C. Code Ann. § 42-9-70.

The principal question raised on appeal and the question upon which the whole case turns is whether AWPA supplements the South Carolina Workers' Compensation Law in the sense that AWPA in an appropriate case provides a remedy where no state workers' compensation remedy is available, or whether it, indeed, provides a remedy in addition to state workers' compensation for an on-the-job injury, so that AWPA in an appropriate case provides a remedy whether or not the injury is covered by state workers' compensation.

We conclude that AWPA was not intended to provide an additional remedy for an on-the-job injury in a case in which state workers' compensation is available. We need not, and do not, decide whether or not AWPA provides a remedy in an appropriate case for an on-the-job injury when an employer does not have state workers' compensation insurance.[1]

We initially note that 29 U.S.C. § 1871 expresses Congress' intention to supplement state law: "This chapter is intended to supplement state law, and compliance with this chapter shall not excuse any person from compliance with appropriate state law and regulation." It is

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[1] AWPA, 29 U.S.C. § 1854(c)(1), provides for an award of damages for "intentionally" violating any provision of the chapter.

doubtless true, as plaintiff argues, that this section permits the States to enact more stringent requirements than AWPA without federal interference or preemption. But that is not to say that where an on-the-job injury is covered by a state workers' compensation law that the federal statute gives an additional remedy for the same injury. Section 1871, however, is a clear direction that Congress did not intend to preempt state workers' compensation laws. The fact that such laws were not intended to be preempted is shown by that part of the statute, 29 U.S.C. § 1841, dealing with motor vehicle safety. The section sets standards for the vehicles involved in the transportation of migrant workers by agricultural employers, and subsection (b)(1)(C) provides (in order to protect the workers) that the employer have a liability insurance policy or bond covering the operation of any vehicle used to transport migrant workers. This provision is then followed by subsection (c) which provides, in subsection (1), that no such insurance policy or bond shall be required of the employer if those workers are transported only under circumstances for which there is coverage under a state workers' compensation law. In addition to demonstrating that Congress did not intend to preempt state law, § 1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with the state laws, and not to interfere or supersede them.

We keep in mind that this employer has elected to be bound and has procured workers' compensation insurance as it contracted with the plaintiff so to do. See S.C. Code Ann. § 42-1-360(5). So, the plaintiff here is covered

by South Carolina workers' compensation insurance. He has in fact filed a state workers' compensation claim.

So far as the cases go, there is a dearth of direct authority on the question at hand. We are persuaded, however, by two cases in arriving at our conclusion. They are *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382, 17 L.Ed.2d 258 (1966), and *Garvin v. Alumax of South Carolina, Inc.*, 787 F.2d 910 (4th Cir.1986).

The *Demko* case involved the claim of a federal prisoner who was injured while performing an assigned prison task. He filed his claim for compensation benefits under 18 U.S.C. § 4126 which, with the regulations promulgated under it, provided that prisoners would be compensated for such injuries, but not to exceed the amount payable under the federal employees' compensation act. The statute authorizing the prisoner's claim contained no provision that the compensation award was exclusive. See the Third Circuit opinion in *Demko*, 350 F.2d 698, 700. The prisoner then filed his claim against the United States under the Federal Tort Claims Act. The Court denied the claim, stating that: "Consequently, we decide this case on the *Johansen* [343 U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051] principle that, where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." 385 U.S. 152, 87 S.Ct. at 384.

In *Garvin*, a longshoreman was injured on a pier in South Carolina in a location in which he was covered both by the federal Longshoreman and Harbor Workers' Compensation Act, as well as under the South Carolina Workers' Compensation Law. He filed his claim under the

federal statute for compensation, and then sued Alumax, the owner of the machine which injured him, which would have been immune under state law because of the South Carolina Workers' Compensation Act, but not under the federal statute which extended immunity only to the subcontractor for whom Garvin worked, not to the owner. We held that Garvin's suit was barred because of the immunity granted by the South Carolina Workers' Compensation Law. While the decision in *Garvin* was based in part on the fact that Garvin's suit against Alumax was based on a state common law cause of action, see pp. 917-18, we also reasoned, in harmonizing the state and federal statutes, that: "There is nothing in that amendment[2] [to the LHWCA] or its legislative history, however, to indicate a congressional intention to restrict the application of state created immunity of contractors in situations in which the state statute traditionally had been applied." 787 F.2d 916-17.

Applying the reasoning of *Demko* and *Garvin* to the case at hand, we find nothing in the legislative history, which is found at 4 U.S.Code & Adm.News (1982), p. 4547 (House Rep. No. 97-885, no Senate report submitted) or in the language of the statute which indicate that the South Carolina Workers' Compensation Law, which does cover the plaintiff, should not be the exclusive remedy to protect him from an on-the-job-injury. *Demko*, 385 U.S. p.

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[2] A 1984 amendment to the L.H.W.C.A. provided that the federal statute's immunity did not extend to Alumax. P.L. 98-426.

152, 87 S.Ct. at p. 384.[3] As *Demko* points out, again on page 152, to hold that the AWPA would have the supplemental effect claimed by the plaintiff would give the plaintiff greater protection than other agricultural workers in South Carolina covered by that State's Workers' Compensation Law. By the same token, we find nothing in the AWPA or in its legislative history to indicate a Congressional intention to restrict the application of state created immunity in cases in which a state workers' compensation law covers the injury at hand. *Garvin* pp. 916-917.[4]

When we take the reasoning of *Demko* and *Garvin* into account, considering that the statute itself is in terms not exclusive and that at least one part of it was drafted to coincide with state workers' compensation laws, we are of opinion, and hold, that when a migrant agricultural worker is injured on the job and his injury is covered by a state workers' compensation law, as here, if that state's workers' compensation law provides that it is the exclusive remedy, as does South Carolina's, the worker is bound by that provision.

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[3] The Court contrasted *United States v. Muniz*, 374 U.S. 150, 83 S.Ct. 1850, 10 L.Ed.2d 805 (1963), in which a prisoner had been allowed to proceed under the F.T.C.A. for an injury when he "was not protected under the prison compensation laws". 385 U.S. 153, 87 S.Ct. at 385.

[4] We mention, and this is supportive of our opinion, that the plaintiff here contracted with his employer that the employer place him under South Carolina Workers' Compensation Law, which provides that it is the exclusive remedy. S.C. Code Ann. § 42-5-10. Yet, at the same time the plaintiff seeks the benefits of that statute, he seeks to escape from the exclusivity provisions of the same law under which he claims.

The judgment of the district court is accordingly

AFFIRMED.[5]

MURNAGHAN, Circuit Judge, concurring:

In concurring with the majority opinion, I do not mean to cast doubt on the result reached. However, the substantial reliance placed by the majority on *Garvin v. Alumax of South Carolina, Inc.*, 787 F.2d 910 (4th Cir.1986), requires a response by me. I dissented in *Garvin* on the grounds that the court lacked jurisdiction to consider and reach a decision on the points dealt with in *Garvin*. I still retain that view though of course *Garvin* is the law of the circuit. However, in the present case reliance of *Garvin* was not necessary to the decision and I would prefer not to rely on it in reaching the conclusion come to by the majority.

Otherwise, I have no difference with the majority opinion and therefore concur.

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[5] The plaintiff on appeal takes issue with the district court's statement that it considered the case as on a motion for summary judgment, but in its order dismissed for failure to state a cause of action under Rule 12(b)(6). He also takes issue with the grant of summary judgment. While in some cases such a point might be determinative, we have in our decision given the plaintiff the benefit of every fact he claims as did the district court. So, whether the case be decided upon a motion to dismiss or upon a motion for summary judgment is of no moment.

APPENDIX E

§ 1801. Congressional statement of purpose

It is the purpose of this chapter to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this chapter; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers.

(Pub.L. 97-470, § 2, Jan. 14, 1983, 96 Stat. 2584.)

§ 1841. Motor vehicle safety

(a) Mode of transportation subject to coverage

(1) Except as provided in paragraph (2), this section applies to the transportation of any migrant or seasonal agricultural worker.

(2) This section does not apply to the transportation of any migrant or seasonal agricultural worker on a tractor, combine, harvester, picker, or other similar machinery and equipment while such worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or the care of livestock or poultry.

(b) applicability of standards, licensing, and insurance requirements; promulgation of regulations for standards; criteria, etc., for regulations; amount of insurance required

(1) When using, or causing to be used, any vehicle for providing transportation to which this section applies, each agricultural employer, agricultural association, and farm labor contractor shall –

(A) ensure that such vehicle conforms to the standards prescribed by the Secretary under paragraph (2) of this subsection and other applicable Federal and State safety standards,

(B) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle, and

(C) have an insurance policy or a liability bond that is in effect which insures the agricultural employer, the agricultural association, or the farm labor contractor against liability for damage to persons or property arising from the ownership, operation, or the causing to be operated, of any vehicle used to transport any migrant or seasonal agricultural worker.

(2)(A) For purposes of paragraph (1)(A), the Secretary shall prescribe such regulations as may be necessary to protect the health and safety of migrant and seasonal agricultural workers.

• • •

(c) Adjustments of insurance requirements in event of workers compensation coverage

If an agricultural employer, agricultural association, or farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of

subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply:

(1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

(2) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

(d) Time for promulgation of regulations for standards implementing requirements; revision of standards

The Secretary shall, by regulations promulgated in accordance with section 1861 of this title not later than the effective date of this chapter, prescribe the standards required for the purposes of implementing this section. Any subsequent revision of such standards shall also be accomplished by regulation promulgated in accordance with such section.

(Pub.L. 97-470, Title IV, § 401, Jan. 14, 1983, 96 Stat. 2594.)

§ 1854. Private right of action

(a) Maintenance of civil action in district court by aggrieved person

Any person aggrieved by a violation of this chapter or any regulation under this chapter by a farm labor contractor, agricultural employer, agricultural association, or other person may file suit in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy and without regard to the citizenship of the parties and without

regard to exhaustion of any alternative administrative remedies provided herein.

(b) Appointment of attorney and commencement of action

Upon application by a complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action.

(c) Award of damages or other equitable relief; amount; criteria; appeal

(1) If the court finds that the respondent has intentionally violated any provision of this chapter or any regulation under this chapter, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of up to $500 per plaintiff per violation, or other equitable relief, except that (A) multiple infractions of a single provision of this chapter or of regulations under this chapter shall constitute only one violation for purposes of determining the amount of statutory damages due a plaintiff; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.

(2) In determining the amount of damages to be awarded under paragraph (1), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(3) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of Title 28.

(Pub. L. 97-470, Title V, § 504, Jan. 14, 1983, 96 Stat. 2597.)

§ 1871. State laws and regulations

This chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation.

(Pub.L. 97-470, Title V, § 521, Jan. 14, 1983, 96 Stat. 2599.)

APPENDIX F

§ 500.122 Adjustments in insurance requirements when workers' compensation coverage is provided under State law.

* * *

(b) Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

APPENDIX G

440.11 Exclusiveness of liability. –

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death.

* * *

APPENDIX H

MIGRANT WORKER PROTECTION ACT
P.L. 97-470

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

P.L. 97-470, see page 96 Stat. 2583

House Report (Education and Labor Committee) No. 97-885,
Sept. 28, 1982 [To accompany H.R. 7102]

Cong. Record Vol. 128 (1982)

DATES OF CONSIDERATION AND PASSAGE

House September 29, December 20, 1982

Senate December 19, 1982

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 97-885

[page 1]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7102) to provide for the protection of migrant and seasonal agricultrual workers and for the registration of contractors of migrant and seasonal agricultural labor and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Background and History of Legislation

H.R. 7102 is a consensus bill – a result reached only after extensive negotiation between representatives of the agricultural community, organized labor, migrant groups,

the United States Department of Labor, and the committees of jurisdiction in both the U.S. House of Representatives and the United States Senate. Its development began as dissatisfaction manifested with the Farm Labor Contractor Registration Act of 1963, as amended. The failure of current law to achieve its goal of fairness and equity for migrant workers combined with employer objections as to their treatment under the Act which, at best was haphazard, burdensome and often conflicting, gave the negotiations that momentum and made the attainment of legislative change obligatory.

• • •

The Act provides that the vehicles used to transport migrant or seasonal agricultural workers be covered by insurance or liability bond which insures the agricultural employer, agricultural association or farm labor contractor against liability for damage to persons or property arising from the ownership, operation or causing to be operated of such vehicles. The level of the insurance shall be at least the amount currently required for common carriers under part II of the ICA and the regulations prescribed thereunder. The Act further provides that in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damage to persons need be obtained.

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Inflationary Impact

Since the bill adds no new protections and, in fact, streamlines procedures from that of current law, the Committee anticipates no inflationary impact on the national

economy in the first year of operation nor in the successive years.

* * *

If the farm labor contractor, agricultural employer or association is the employer of any migrant or seasonal worker for the purposes of State workers' compensation law and thus provides coverage for the workers in the case of bodily injury or death, the section would excuse the requirement of an insurance policy or liability bond if the workers are only transported under circumstances where there is coverage under State law. An insurance policy or liability bond will be required for those circumstances where there is no coverage under State law.

* * *

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

REFUGIA FLETES, Plaintiff, v. JOHN I. HAAS, INC., doing business as SUNNYBROOK FARMS, Defendant.	)	Civil No. 89-85-FR OPINION (Filed June 2, 1989)

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FRYE, Judge:

In the matter before the court, defendant, John E. Haas, Inc., doing business as Sunnybrook Farms (Haas), moves the court for summary judgment in his favor on the grounds that no genuine issues of material fact exist and that he is entitled to judgment as a matter of law (#10). In the alternative, Haas moves the court for a stay of this proceedings pending the final resolution of plaintiff, Refugia Fletes', claim before the Oregon Workers' Compensation Board and the Oregon Court of Appeals (#10).

The issue before the court is whether Fletes may maintain this action under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) when she has a remedy against her employer under the Oregon Workers' Compensation Act.

UNDISPUTED FACTS

Haas, an agricultural employer, employed Fletes in April, 1987 to perform a variety of tasks in agriculture on property Haas leases near Grants Pass, Josephine County, Oregon. On April 15, 1987, Fletes was struck by a loose wooden sideboard while she was riding to work in the back of a truck owned by Haas. She suffered injuries to her back as a result of the accident.

On May 11, 1987, Fletes filed a claim for workers' compensation benefits which Haas contested on the grounds that Fletes had not been injured at work. On September 24, 1987, a hearing was held before a referee on Fletes' claim for workers' compensation. The referee

found that although Fletes' description of the accident was plausible, she had failed to prove by a preponderance of the evidence that she had suffered a personal injury on the job. Benefits were denied. In October, 1987, Fletes appealed the decision of the referee to the Oregon Workers' Compensation Board. The appeal is pending.

On April 6, 1989, Fletes filed an amended complaint in this court alleging that the truck in which she was riding when she was injured was not in compliance with the motor vehicle safety standards promulgated by the United States Department of Labor pursuant to the authority granted that agency by the AWPA.

ANALYSIS

The issue before the court is whether the Oregon Workers' Compensation Act provides the exclusive remedy for agricultural employees in the State of Oregon who claim to have been injured on the job as a result of a violation of the AWPA. 29 U.S.C. § 1871 provides that "[t]his chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation."

There is a split of authority as to the proper interpretation of 29 U.S.C. § 1871. Haas contends that the remedy pursued by Fletes through the workers' compensation system is exclusive and that this action should be barred. He relies upon *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir.), *cert. denied*, ___ U.S. ___, 108 S. Ct. 163 (1987), in which the court concluded that "when a migrant agricultural worker is injured on the job and his

injury is covered by a state workers' compensation law, as here, if that state's workers' compensation law provides that it is the exclusive remedy, as does South Carolina's, the worker is bound by that provision." 817 F.2d at 1120.

In opposition to the motion for summary judgment, Fletes relies upon *Barrett v. Adams Fruit Co.*, 867 F.2d 1305 (11th Cir. 1989), in which the court explained:

> Both the goal of preventing unsafe transportation practices and the role of private suits in enforcing worker protections convince us that applying Fla.Stat. § 440.11 to bar private suits for violations of the Act when transportation is covered by workers' compensation insurance would frustrate congressional intent. Many of the transportation safety protections set forth in the Act and regulations would become effectively unenforceable. Once an employer obtained workers' compensation coverage, he or she would have little incentive to comply with the transportation safety requirements set out in the Act and its regulations. We therefore conclude that the exclusive remedy provision in Fla.Stat. § 440.11 is preempted because it stands as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

We cannot agree with Adams that section 1841(c) demonstrates that Congress intended for workers' compensation benefits, where available, to be the exclusive remedy for injuries resulting from violations of the transportation safety requirements of the Act. This subsection relates to minimum insurance coverage, only part of the protections covering transported workers in the Act. Congress was well aware of the possibility of "double dipping." *See, e.g., Hearings* at 134. We believe that if Congress had intended to restrict significantly the availability of such a key

> ingredient as the private right of action it would have done so directly.

867 F.2d at 1309-10 (citations omitted).

Fletes brings this action alleging that the truck in which she was riding when she was injured was not in compliance with the motor vehicle safety standards promulgated by the United States Department of Labor pursuant to the authority granted that agency by the AWPA. Haas' compliance with the transportation safety requirements set out in the AWPA and the regulations promulgated pursuant to the AWPA was not an issue in the workers' compensation context.

This court is persuaded by the *Barrett* court's observation that many of the transportation safety requirements set forth in the AWPA and the regulations based on the AWPA will become effectively unenforceable if this court rules that the existence of a remedy under workers' compensation insurance bars an action under the AWPA for alleged noncompliance with the transportation safety requirements of AWPA.

The possibility of a double recovery may be considered in awarding actual damages. However, the court concludes that Haas' motion for summary judgment should be denied.

Haas moves the court for a stay of this case pending the final resolution of Fletes' claims before the Oregon Workers' Compensation Board so that the principles of collateral estoppel may be applied. While the court has the discretion to stay a case pending similar action in a state forum, the balance is heavily weighed in favor of the exercise of jurisdiction. *Moses H. Cone Memorial Hosp.*

v. *Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983). In this case, federal law and not state law is at issue. The state proceedings have been pending since October, 1987. While the resolution of the workers' compensation case may affect the amount of damages claimed here, there is no compelling reason for this court to stay this action now.

Haas' motion for summary judgment and, in the alternative, for a stay (#10) is denied.

DATED this 2 day of June, 1989.

/s/ Helen J. Frye
Helen J. Frye
United States District
Judge